

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 250

SENATE BILL 1284

AN ACT

REPEALING SECTION 32-1134.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 32-1139 AND 32-1154, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 10, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1155.01; RELATING TO THE REGISTRAR OF CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Repeal

3 Section 32-1134.01, Arizona Revised Statutes, is repealed.

4 Sec. 2. Section 32-1139, Arizona Revised Statutes, is amended to read:

5 32-1139. Liability of fund for each residential contractor's
6 license; suspension of license; repayment

7 A. The liability of the fund shall not exceed two hundred thousand
8 dollars for any one residential contractor's license. If claims against the
9 fund on behalf of any one residential contractor's license exceed two hundred
10 thousand dollars, the claims shall be paid BASED ON A PRO RATA SHARE OF THE
11 COMMON LIABILITY ~~in order of the date of entry of the order of the registrar~~
12 ~~or court~~, and the registrar or a court entering an order for payment after
13 the sum of two hundred thousand dollars has been paid from the fund shall
14 modify the order indicating that no further recovery from the fund shall be
15 allowed.

16 B. If any amount is paid from the fund in settlement of a claim
17 arising from the act, representation, transaction or conduct of a residential
18 contractor, the license of the contractor shall be automatically suspended
19 by operation of law until the amount paid from the fund is repaid in full,
20 plus interest at the rate of ten per cent a year. Any person who is or was,
21 at the time of the act or omission, named on a license that has been
22 suspended because of a payment from the recovery fund is not eligible to
23 receive a new license or retain another existing license that also shall be
24 suspended by operation of law, nor shall any suspended license be
25 reactivated, until the amount paid from the fund is repaid as provided in
26 this subsection.

27 C. AFTER RECEIVING AN AWARD FROM THE FUND PURSUANT TO THIS ARTICLE A
28 PERSON IS DEEMED TO HAVE ASSIGNED TO THE REGISTRAR THE PERSON'S RIGHTS FOR
29 RECOVERY AGAINST THE RESPONSIBLE RESIDENTIAL CONTRACTOR LICENSED PURSUANT TO
30 THIS CHAPTER TO THE EXTENT OF THE PERSON'S AWARD FROM THE FUND.

31 Sec. 3. Section 32-1154, Arizona Revised Statutes, is amended to read:

32 32-1154. Grounds for suspension or revocation of license;
33 continuing jurisdiction; civil penalty; recovery
34 fund award; summary suspension

35 A. The holder of a license or any person listed on a license pursuant
36 to this chapter shall not commit any of the following acts or omissions:

37 1. Abandonment of a contract or refusal to perform after submitting a
38 bid on work without legal excuse for the abandonment or refusal.

39 2. Departure from or disregard of plans or specifications or any
40 building codes of the state or any political subdivision of the state in any
41 material respect which is prejudicial to another without consent of the owner
42 or the owner's duly authorized representative and without the consent of the
43 person entitled to have the particular construction project or operation
44 completed in accordance with such plans and specifications and code.

45 3. Violation of any rule adopted by the registrar.

1 4. Failure to comply with the statutes or rules governing social
2 security, workers' compensation or unemployment insurance.

3 5. Failure to pay income taxes, withholding taxes or any tax imposed
4 by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the
5 licensed business.

6 6. Misrepresentation of a material fact by the applicant in obtaining
7 a license.

8 7. The doing of a fraudulent act by the licensee as a contractor
9 resulting in another person being substantially injured.

10 8. Conviction of a felony.

11 9. Failure in a material respect by the licensee to complete a
12 construction project or operation for the price stated in the contract, or in
13 any modification of the contract.

14 10. Aiding or abetting a licensed or unlicensed person to evade this
15 chapter, knowingly or recklessly combining or conspiring with a licensed or
16 unlicensed person, allowing one's license to be used by a licensed or
17 unlicensed person or acting as agent, partner, associate or otherwise of a
18 licensed or unlicensed person with intent to evade this chapter.

19 11. Failure by a licensee or agent or official of a licensee to pay
20 monies in excess of seven hundred fifty dollars when due for materials or
21 services rendered in connection with the licensee's operations as a
22 contractor when the licensee has the capacity to pay or, if the licensee
23 lacks the capacity to pay, when the licensee has received sufficient monies
24 as payment for the particular construction work project or operation for
25 which the services or materials were rendered or purchased.

26 12. Failure of a contractor to comply with any safety or labor laws or
27 codes of the federal government, state or political subdivisions of the
28 state.

29 13. Failure in any material respect to comply with this chapter.

30 14. Knowingly entering into a contract with a contractor for work to be
31 performed for which a license is required with a person not duly licensed in
32 the required classification.

33 15. Acting in the capacity of a contractor under any license issued
34 under this chapter in a name other than as set forth upon the license.

35 16. False, misleading or deceptive advertising whereby any member of
36 the public may be misled and injured.

37 17. Knowingly contracting beyond the scope of the license or licenses
38 of the licensee.

39 18. Contracting or offering to contract or submitting a bid while the
40 license is under suspension or while the license is on inactive status.

41 19. Failure to notify the registrar in writing within a period of
42 fifteen days of any disassociation of the person who qualified for the
43 license. Such licensee shall have sixty days from the date of such
44 disassociation to qualify through another person.

1 20. Subsequent discovery of facts which if known at the time of
2 issuance of a license or the renewal of a license would have been grounds to
3 deny the issuance or renewal of a license.

4 21. Having a person named on the license who is named on any other
5 license in this state or in another state which is under suspension or
6 revocation unless the prior revocation was based solely on a violation of
7 this paragraph.

8 22. Continuing a new single family residential construction project
9 with actual knowledge that a pretreatment wood-destroying pests or organisms
10 application was either:

11 (a) Not performed at the required location.

12 (b) Performed in a manner inconsistent with label requirements, state
13 law or rules.

14 23. Failure to take appropriate corrective action to comply with this
15 chapter or with rules adopted pursuant to this chapter without valid
16 justification within a reasonable period of time after receiving a written
17 directive from the registrar. The written directive shall set forth the time
18 within which the contractor is to complete the remedial action. The time
19 permitted for compliance shall not be less than fifteen days from the date of
20 issuance of the directive. A license shall not be revoked or suspended nor
21 shall any other penalty be imposed for a violation of this paragraph until
22 after a hearing has been held.

23 24. Prohibit, threaten to prohibit, retaliate, threaten to retaliate or
24 otherwise intimidate any contractor or materialman from serving a preliminary
25 notice pursuant to section 33-992.01.

26 B. The registrar may on the registrar's own motion, and shall on the
27 written complaint of any owner or contractor that is a party to a
28 construction contract or a person who suffers a material loss or injury as a
29 result of a contractor's failure to perform work in a professional and
30 workmanlike manner or in accordance with any applicable building codes and
31 professional industry standards, investigate the acts of any contractor
32 within this state and may temporarily suspend, with or without imposition of
33 specific conditions in addition to increased surety bond or cash deposit
34 requirements, or permanently revoke any or all licenses issued under this
35 chapter if the holder of the license issued pursuant to this chapter is
36 guilty of or commits any of the acts or omissions set forth in subsection A
37 of this section. For the purposes of this subsection:

38 1. "Construction contract" means a written or oral agreement relating
39 to the construction, alteration, repair, maintenance, moving or demolition of
40 any building, structure or improvement or relating to the contractor's
41 excavation of or other development or improvement to land if the registrar
42 investigates the contractor's actions under this subsection.

43 2. "Owner" means any person, firm, partnership, corporation,
44 association or other organization, or a combination of any of them, that
45 causes a building, structure or improvement to be constructed, altered,

1 repaired, maintained, moved or demolished or that causes land to be excavated
2 or otherwise developed or improved, whether the interest or estate of the
3 person is in fee, as vendee under a contract to purchase, as lessee or
4 another interest or estate less than fee, pursuant to a construction
5 contract.

6 C. The expiration, cancellation, suspension or revocation of a license
7 by operation of law or by decision and order of the registrar or a court of
8 law or the voluntary surrender of a license by a licensee shall not deprive
9 the registrar of jurisdiction to proceed with any investigation of or action
10 or disciplinary proceeding against such licensee, or to render a decision
11 suspending or revoking such a license, or denying the renewal or right of
12 renewal of such license.

13 D. The registrar may impose a civil penalty of not to exceed five
14 hundred dollars on a contractor for each violation of subsection A, paragraph
15 23 of this section. Civil penalties collected pursuant to this subsection
16 shall be deposited in the residential contractors' recovery fund. The
17 failure by the licensee to pay any civil penalty imposed under this
18 subsection results in the automatic revocation of the license thirty days
19 after the effective date of the order providing for the civil penalty. No
20 future license may be issued to an entity consisting of a person associated
21 with the contractor, as defined in section 32-1101, subsection A, paragraph
22 5, unless payment of any outstanding civil penalty is tendered.

23 E. The registrar shall impose a civil penalty of not to exceed one
24 thousand dollars on a contractor for each violation of subsection A,
25 paragraph 18 of this section. Civil penalties collected pursuant to this
26 subsection shall be deposited in the residential contractors' recovery fund.
27 The failure by the licensee to pay any civil penalty imposed under this
28 subsection results in the automatic permanent revocation of the license
29 thirty days after the effective date of the order providing for the civil
30 penalty. No future license may be issued to an entity consisting of a person
31 associated with the contractor, as defined in section 32-1101, subsection A,
32 paragraph 5, unless payment of any outstanding civil penalty is tendered.

33 F. Notwithstanding any other provisions in this chapter, if a
34 contractor's license has been revoked or has been suspended as a result of an
35 order to remedy a violation of this chapter, ~~and the contractor refuses or is~~
36 ~~unable to comply with the order of the registrar to remedy the violation,~~ the
37 registrar may order payment from the residential contractors' recovery fund
38 to remedy the violation. The registrar shall serve the contractor with a
39 notice setting forth the amount claimed or to be awarded. If the contractor
40 contests the amount or propriety of the payment, the contractor shall respond
41 within ten days of the date of service by requesting a hearing to determine
42 the amount or propriety of the payment. Failure by the contractor to respond
43 in writing within ten days of the date of service shall be deemed a waiver by
44 the contractor of the right to contest the amount claimed or to be awarded.
45 Service may be made by personal service to the contractor or by mailing a

1 copy of the notice by registered mail with postage prepaid to the
2 contractor's latest address of record on file in the registrar's office. If
3 service is made by registered mail, it is effective five days after the
4 notice is mailed. Except as provided in section 41-1092.08, subsection H,
5 the contractor or injured person may seek judicial review of the registrar's
6 final award pursuant to title 12, chapter 7, article 6.

7 Sec. 4. Title 32, chapter 10, article 3, Arizona Revised Statutes, is
8 amended by adding section 32-1155.01, to read:

9 32-1155.01. Arbitration process; applicability

10 A. NOTWITHSTANDING TITLE 41, CHAPTER 6, ARTICLE 10 AND ANY OTHER
11 PROVISION OF THIS ARTICLE, IF A PERSON FILES A WRITTEN COMPLAINT WITH THE
12 REGISTRAR PURSUANT TO SECTION 32-1155 AND ANY PARTY TO THE COMPLAINT DISPUTES
13 THE REGISTRAR'S CORRECTIVE WORK ORDER, WITHIN THIRTY CALENDAR DAYS AFTER THE
14 CORRECTIVE WORK ORDER IS MADE, THE COMPLAINT MAY, AT THE SOLE DISCRETION OF
15 THE REGISTRAR, BE REFERRED TO ARBITRATION IF THE COST OF REPAIRS IS FIVE
16 THOUSAND DOLLARS OR LESS. IF THE COST OF REPAIRS IS MORE THAN FIVE THOUSAND
17 DOLLARS, THE CONTESTING PARTIES, WITHIN THIRTY CALENDAR DAYS AFTER THE
18 CORRECTIVE WORK ORDER, MAY OPT INTO ARBITRATION IF ALL OF THE PARTIES
19 AGREE. FOR THE PURPOSES OF THIS SUBSECTION, THE ESTIMATED COST OF REPAIRS
20 SHALL BE DETERMINED AT THE TIME OF INVESTIGATION BY THE REGISTRAR. IF EITHER
21 PARTY DISPUTES THE COST OF THE REPAIRS, THE PARTY OBJECTING SHALL SUBMIT TO
22 THE REGISTRAR WITHIN TEN CALENDAR DAYS TWO SEPARATE BIDS FROM QUALIFIED
23 CONTRACTORS ON THE COST OF THE REPAIRS. FAILURE TO PROVIDE TWO BIDS WITHIN
24 THIS TIME WILL RESULT IN THE PARTY'S WAIVING THEIR RIGHT TO OBJECT TO
25 MANDATORY ARBITRATION.

26 B. THE REGISTRAR SHALL SERVE THE PARTIES NOTICE WHETHER THE MATTER HAS
27 BEEN REFERRED TO ARBITRATION WITHIN TEN CALENDAR DAYS AFTER A REQUEST FOR
28 ARBITRATION HAS BEEN RECEIVED. IF THE MATTER HAS BEEN REFERRED TO
29 ARBITRATION, THE NOTICE ALSO SHALL IDENTIFY THE ARBITRATOR SELECTED BY THE
30 REGISTRAR, WHO SHALL BE A MEMBER IN GOOD STANDING OF THE CONSTRUCTION LAW
31 SECTION OF THE STATE BAR OF ARIZONA. SERVICE SHALL BE MADE BY PERSONAL
32 SERVICE OR BY MAILING A COPY OF THE NOTICE BY CERTIFIED MAIL TO THE
33 LICENSEE'S LATEST ADDRESS OF RECORD ON FILE IN THE REGISTRAR'S OFFICE. IF
34 SERVICE IS MADE BY CERTIFIED MAIL, IT IS EFFECTIVE FIVE CALENDAR DAYS AFTER
35 THE NOTICE IS MAILED.

36 C. SECTION 12-3012 APPLIES AND THE PARTIES HAVE THE RIGHT TO REMOVE AN
37 ARBITRATOR AT ANY TIME ON DISCOVERY OF GROUNDS SET FORTH IN SECTION 12-3011,
38 SUBSECTION B. IF AN ARBITRATOR IS REMOVED PURSUANT TO THIS SUBSECTION, THE
39 REGISTRAR SHALL NOTIFY THE PARTIES OF THE NEW ARBITRATOR SELECTED WITHIN
40 SEVEN CALENDAR DAYS. THE ARBITRATOR HAS IMMUNITY AS PRESCRIBED IN SECTION
41 12-3014.

42 D. THE LICENSEE MAY POST A BOND IN THE AMOUNT OF THE ESTIMATED COST OF
43 REPAIRS WITHIN FOURTEEN CALENDAR DAYS AFTER SERVICE OF THE REGISTRAR'S NOTICE
44 REFERRING THE MATTER TO ARBITRATION. THE REGISTRAR MAY NOT SUSPEND OR REVOKE

1 ANY OF THE LICENSES HELD BY A LICENSEE THAT POSTS A BOND IN THE AMOUNT OF THE
2 CLAIM SUBJECT TO ARBITRATION.

3 E. THE ARBITRATION PROCESS IS GOVERNED BY SECTION 12-3015.

4 F. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, SECTIONS 12-3010,
5 12-3016 AND 12-3017 APPLY TO ARBITRATIONS UNDER THIS SECTION.

6 G. THE ARBITRATION HEARING SHALL BE HELD WITHIN SIXTY CALENDAR DAYS
7 AFTER THE REGISTRAR'S NOTICE REFERRING THE MATTER TO ARBITRATION. THE
8 ARBITRATOR MAY EXTEND THE DEADLINE TO HOLD THE HEARING FOR AN ADDITIONAL
9 THIRTY CALENDAR DAYS ON AGREEMENT OF THE PARTIES OR FOR GOOD CAUSE SHOWN.

10 H. THE ARBITRATOR IS PROHIBITED FROM ORDERING THE SUSPENSION OR
11 REVOCATION OF ANY LICENSE, AWARDING MONETARY DAMAGES, ASSESSING CIVIL
12 PENALTIES OR AWARDING ANY LEGAL FEES OR COSTS IN ANY AMOUNT.

13 I. THE ARBITRATOR SHALL ISSUE A RECOMMENDED ORDER WITH FINDINGS OF
14 FACT AND CONCLUSIONS OF LAW INCLUDING NECESSARY REPAIRS NO LATER THAN FIFTEEN
15 CALENDAR DAYS AFTER THE CLOSE OF THE ARBITRATION HEARING. THE ARBITRATOR
16 SHALL SERVE A COPY OF THE RECOMMENDED ORDER TO EACH PARTY TO THE ARBITRATION
17 PROCEEDING AS WELL AS THE REGISTRAR BY PERSONAL SERVICE OR BY MAILING A COPY
18 OF THE RECOMMENDED ORDER BY CERTIFIED MAIL TO THE LICENSEE'S LATEST ADDRESS
19 OF RECORD ON FILE IN THE REGISTRAR'S OFFICE. IF SERVICE IS MADE BY CERTIFIED
20 MAIL, IT IS EFFECTIVE FIVE CALENDAR DAYS AFTER THE NOTICE IS MAILED. THE
21 ARBITRATOR'S RECOMMENDED ORDER SHALL BECOME AN ORDER OF THE REGISTRAR,
22 SUBJECT TO ACCEPTANCE, MODIFICATION OR REJECTION BY THE REGISTRAR, WITHIN
23 TWENTY CALENDAR DAYS FROM THE DATE OF THE ARBITRATOR'S RECOMMENDED ORDER.
24 THE REGISTRAR'S ORDER BECOMES FINAL THIRTY CALENDAR DAYS AFTER THE DATE OF AN
25 ORDER BY THE REGISTRAR. THE ARBITRATOR OR REGISTRAR SHALL NOT GRANT REQUESTS
26 TO REHEAR THE MATTER. A PARTY WAIVES ANY OBJECTION THAT A ORDER WAS NOT
27 TIMELY MADE UNLESS THE PARTY GIVES NOTICE OF THE OBJECTION TO THE REGISTRAR
28 BEFORE RECEIVING NOTICE OF THE ORDER.

29 J. NOTWITHSTANDING ANY OTHER PROVISION IN THIS CHAPTER, BEFORE AN
30 ORDER OF THE REGISTRAR BECOMES FINAL PURSUANT TO SUBSECTION I OF THIS
31 SECTION, IF A CONTRACTOR FAILS TO COMPLY WITH THE ORDER:

32 1. THE REGISTRAR MAY ORDER THAT THE CASH BOND POSTED PURSUANT TO
33 SUBSECTION D OF THIS SECTION BE DISCHARGED WITHIN TWENTY-FIVE CALENDAR
34 DAYS. THE COMPLAINANT IS NOT ELIGIBLE FOR ANY ADDITIONAL AWARD FROM THE
35 RESIDENTIAL CONTRACTORS' RECOVERY FUND PURSUANT TO SECTION 32-1132 AND MAY
36 NOT SEEK THE SAME AWARD, CLAIM OR REMEDY THROUGH CIVIL COURT.

37 2. IF A BOND IS NOT POSTED BY THE LICENSEE PURSUANT TO SUBSECTION D OF
38 THIS SECTION, THE REGISTRAR MAY SUSPEND OR REVOKE THE LICENSEE'S LICENSE BY
39 OPERATION OF LAW AND ORDER PAYMENT FROM THE RECOVERY FUND FOR CLAIMANTS WHO
40 ARE ELIGIBLE.

41 K. COMPLIANCE WITH THE ORDER SHALL BE DETERMINED BY THE FOLLOWING:

42 1. IF A COMPLAINANT FAILS TO NOTIFY THE REGISTRAR WITHIN TEN CALENDAR
43 DAYS OF THE ORDER BECOMING FINAL, THE RESPONDENT SHALL BE DEEMED TO HAVE
44 COMPLIED WITH THE ORDER.

1 2. IF A COMPLAINANT NOTIFIES THE REGISTRAR OF CONTRACTORS THAT THE
2 RESPONDENT HAS FAILED TO COMPLY WITH THE ORDER, THE REGISTRAR SHALL MAKE A
3 FINAL DETERMINATION OF COMPLIANCE.

4 L. THIS SECTION APPLIES TO ALL COMPLAINTS FILED WITH THE REGISTRAR ON
5 OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

APPROVED BY THE GOVERNOR APRIL 26, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2011.

Passed the House April 18, 2011,

Passed the Senate March 8, 2011,

by the following vote: 58 Ayes,

by the following vote: 30 Ayes,

0 Nays, 2 Not Voting

0 Nays, 0 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

Cheryl Laube
Chief Clerk of the House

[Signature]
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1284

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE .
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 19, 2011

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 20 11

at 12:00 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 26th day of

April

at 10:58 o'clock A. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 26th day of April, 20 11

S.B. 1284

at 2:55 o'clock M.

[Signature]
Secretary of State